

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

CLERK'S OFFICE U.S. DIST. COURT
AT CHARLOTTESVILLE, VA
FILED

SEP 29 2021

Elizabeth Sines, et al

Plaintiffs

v

Jason Kessler, et al

Defendants

Case No: 3:17-cv-072-NKM

JULIA C. DUDLEY, CLERK
BY  DEPUTY CLERK

MOTION IN LIMINE AND NOTICE OF INTENT TO INTRODUCE STATEMENTS
AGAINST INTEREST AND PRIOR TESTIMONY OF UNAVAILABLE WITNESS "EMILY"
GORCENSKI PURSUANT TO FED.R.EVID. 804(b)(3) AND 807

Comes now the Defendant, Christopher Cantwell, and, he Moves this Court In Limine and gives Notice of Intent to Introduce Statements Against Interest Of Unavailable Witness "Emily" Gorcenski Pursuant To Fed.R:Evid. 804(b)(3) And 807. In support, he states as follows:

- 1) "Emily" Gorcenski is a biological male who styles himself a woman and who is a member of the Antifa domestic terrorist organization. Gorcenski was present at the August 11 and 12, 2017, violence that is the subject of this litigation, video taped the events extensively, and, was also present at various events prior to this litigation, including a false report that Cantwell had brandished a firearm at a Walmart parking lot and a meeting with Plaintiff Seth Wispelwey where the violence of August 11, 2017, was agreed to and planned. After the instant events, Gorcenski also ratified the violence that occurred through numerous social media posts.
- 2) Cantwell is trying to locate and subpoena Gorcenski, but, believes

Gorcenski is in Germany and is actively avoiding service of process. As such, Cantwell anticipates that Gorcenski will be unavailable to testify in this matter.

- 3) Cantwell would like to introduce the following statements against interest and/or prior testimonial statements of Gorcenski:
- a) screenshots from Gorcenski's Twitter feed previously appended to Cantwell's Objection To Evidentiary Sanctions Against Defendant Kline;
 - b) transcripts of testimony Gorcenski gave during Cantwell's Virginia state criminal proceedings;
 - c) Exhibits 121-124 & 126-131 of Cantwell's exhibit list, these being videos of the August 11, 2017, violence at the Thomas Jefferson statue at the University of Virginia ("UVa"), most downloaded from Gorcenski's Periscope account, Periscope being a livestreaming service. As Cantwell was also present for the events depicted in most of this video, these videos are also admissible from his personal knowledge under Fed.R.Evid. 1007 and 602;
 - d) Exhibit 137, a video Gorcenski has stated best depicts his involvement in the violence of August 11, 2017, along with his statements;
 - e) Exhibit 13, a collection of statements from Gorcenski's Twitter feed generally advocating violence against persons like the Defendants;
 - f) Exhibit 20, the release of claims against Cantwell signed by Gorcenski, also admissible pursuant to Fed.R.Evid. 602 from Cantwell's personal knowledge, and, Fed.R.Evid. 201;
 - g) Exhibit 44, a letter from attorney Pam Starsis threatening police not to interfere with Gorcenski's and other's plans for

violence August 11 and 12, 2017;

- h) Exhibit 45, screenshots of Gorcenski doxxing white nationalist participants in the demonstrations of August 11 and 12, 2017, and soliciting violence against them as part of Gorcenski's involvement in the Antifa domestic terror organization;
- i) Exhibit 48-49, livestream videos of Gorcenski recording acts of violence on behalf of the Antifa domestic terror organization July 8, 2017;
- j) Exhibit 51, "Who Are The Antifa", an article by Antifa domestic terrorist Mark Bray glorifying and ratifying the violence committed by Gorcenski and other members of the Antifa domestic terror organization August 11 and 12, 2017. Had Gorcenski been available to testify, he would have testified that he had endorsed the views contained in this article and shared it with other members and supporters of the Antifa domestic terror organization;
- k) Exhibit 55-56, posts from Its Going Down, an Antifa domestic terror website, urging Antifa to resist Grand Jury subpoenas;
- l) Exhibits 55(2) and 56(2) and 71, posts on Its Going Down and Unicorn Collective websites calling for the Antifa domestic terror organization to commit acts of criminal violence on August 11 and 12, 2017;
- m) Exhibits 99-101 and 129, a compilation of videos livestreamed by Gorcenski showing Gorcenski identifying white nationalist demonstrators to be attacked by the Plaintiffs and their Antifa domestic terror associates;
- n) Exhibits 102-103, material from the group Showing Up For Racial Justice ("SURJ"), an Antifa domestic terror affiliate, raising bond money in advance of the August 11 and 12, 2017, protests

raising money for the Plaintiffs and their associates in the expectation that Plaintiffs and their associates would commit crimes;

- o) Exhibit 118, a 302 given by Gorcenski to the FBI, also admissible pursuant to Fed.R.Evid. 803(8);
 - p) Exhibit 119 a sworn affidavit given by Gorcenski to obtain a warrant against Cantwell. The statements made in Exhibits 118-119 and Gorcenski's testimony in Cantwell's Virginia criminal cases are inconsistent;
 - q) Exhibits 128 and 130-131, which are compilations of videos of Gorcenski mocking and engaging demonstrators, and then feigning panic or fear and claiming to be under assault for Antifa filmographers.
- 4) The relevance of the above exhibits should be obvious. First, we have videos of the violence of August 11, 2021, shot by Gorcenski, depicting Gorcenski's involvement in violence. We then have a large amount of material which Gorcenski, as a member of the domestic terror organization Antifa, would have been familiar with detailing Antifa's plan to engage in criminal violence August 11 and 12, 2021. And, there is a large amount of material showing Gorcenski feigning victimization and swearing falsely under oath to bring legal process against Cantwell, illustrating the Antifa tactic of engaging in vigilante violence, as the 1870s Ku Klux Klan was alleged to have done, and, then, utilizing legal process to attack those they have just victimized, also like the Klan was alleged to have done and as Plaintiffs are doing here. All of these are statements against interest admissible under Fed.R.Evid. 804(b)(3).
- 5) Similarly, equity demands that this material be admitted even if

Gorcenski cannot be found to provide foundation. The authenticity and trustworthiness of this video is not in dispute, and, can be attested to in part by numerous witnesses, including Cantwell. And, this all goes to the heart of the question here, which is who started the violence August 11 and 12, 2017, and, was it the Defendants acting from racial animus, or, the Plaintiffs acting from anti-white and Judaic supremacist racial animus against the Defendants. As such, this material should be admitted under Fed.R.Evid. 807(a).

Respectfully Submitted,



Christopher Cantwell
USP-Marion
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CERTIFICATE OF SERVICE

I hereby certify that this Motion in Limine was mailed to the Clerk of the Court, 1st Class Postage Prepaid, for posting upon the ECF system, to which all other parties are subscribed, and, handed to USP-Marion staff members Nathan Simpkins and/or Kathy Hill for electronic transfer to the Court this 29th day of September, 2021.



Christopher Cantwell